

**DRAFT PROPOSED AMENDMENTS TO THE FAIRFAX COUNTY CODE
CONCERNING THE REGULATION OF CERTAIN FOOD
AND FOOD SERVICE ESTABLISHMENTS**

Chapter 43.1

Food and Food Establishments

Article 1. General Provisions

Section 43.1-1-1. Title.

This Chapter may be known and cited as "The Food and Food Handling Code" of Fairfax County, Virginia.

Section 43.1-1-2. Purpose.

This Chapter shall be liberally construed and applied to promote the purpose of safeguarding public health and ensuring that food is safe, unadulterated and properly presented when offered to the consumer.

Section 43.1-1-3. Adoption of the United States Food and Drug Administration/Public Health Service ~~1999~~ 2005 Food Code.

(a) Chapters 1 through 8, inclusive, and all appendices and annexes of the United States Food and Drug Administration, Public Health Service ~~1999~~ 2005 Food Code ("FDA Food Code"), as adopted and promulgated by the United States Food and Drug Administration, Public Health Service ("FDA/USPHS"), including the modifications of the FDA Food Code that are set out in Section 43.1-1-5, are hereby adopted and incorporated in their entirety into this Chapter as if fully set forth herein. In the event of conflict or inconsistency between this Chapter and the FDA Food Code, the provisions of this Chapter shall control. When used in the FDA Food Code, the term "Health Authority" shall mean the Director, as defined in Section 43.1-1-4 of this Chapter.

(b) A certified copy of the FDA Food Code shall be maintained by the Director at the main administrative office of the Health Department, and it shall be available for review by members of the public.

Section 43.1-1-4. Definitions.

The following words and phrases, when used in this Chapter, including in the incorporated FDA Food Code, have the meanings given below, unless the context clearly indicates a different meaning:

Base of operation means a permitted food establishment that contains all of the necessary equipment and storage facilities to support the operation of a mobile food unit.

Board of Supervisors means the Board of Supervisors of Fairfax County, Virginia.

Certificate means the document issued by the Director, or the document issued by another jurisdiction or private vendor that is accepted by the Director, which demonstrates that the individual identified on the certificate has been determined to be a certified food manager or a certified limited food manager.

Certified food manager means a person who has passed an examination approved by the Director, or an examination in another jurisdiction that is accepted by the Director, and has received a certified food manager's certificate issued or recognized by the Director.

Certified limited food manager means a person who has passed an examination approved by the Director, or an examination in another jurisdiction that is accepted by the Director, and has received a certified limited food manager's certificate issued or recognized by the Director.

Director means the Director of the Fairfax County Department of Health or the designee of the Director.

FDA Food Code means the ~~1999~~ 2005 Food Code, as adopted and promulgated by the United States Food and Drug Administration, Public Health Service, as that Code may be amended from time to time.

Food establishment means an operation that stores, prepares, serves, or otherwise provides food for human consumption, and provides such food directly to a member of the public for consumption; provided, that "food establishment" shall not include the following:

(1) An establishment that offers only prepackaged foods that are not potentially hazardous;

(2) A produce stand that offers only whole, uncut fresh fruits and vegetables;

(3) A kitchen in a private home that prepares food that is not potentially hazardous for sale or consumption at a non-profit or charitable function if the consumer is informed, by means of a clearly visible sign at the point of sale or consumption, that the food was prepared in a kitchen that is not subject to regulation or inspection by the Director;

(4) A kitchen in a private home that prepares and offers food to guests, for an exchange of consideration, if the home is owner-occupied, the number of available guest bedrooms does not exceed six, breakfast is the only meal offered, the number of guests served does not exceed 18, and the consumer is informed by statements contained in published advertisements, mailed brochures or signs posted in the registration or dining area that the food is prepared in a kitchen that is not regulated and inspected by the Director; or

(5) Private homes or vehicles where food is prepared or served for noncommercial consumption by the owners, occupants or their guests.

(6) A food processing plant.

(7) Convenience Stores or gas stations that have 15 or fewer seats at which food is served to the public on the premises of the convenience store or gas station and are not associated with a national or regional restaurant chain.

Limited food establishment means a food establishment that serves only hotdogs or frankfurter-type foods, prepackaged foods or foods that are not potentially hazardous foods.

Limited service mobile food unit means a limited food establishment that is designed to be readily moveable.

Mobile food unit means a food establishment that is designed to be readily moveable.

Permit means the license issued by the Director that authorizes a person to operate a food establishment.

Person in charge means the individual present in a food establishment who is responsible for the food service operation at the time of inspection authorized by this Chapter. If no

single individual is responsible for the food service operation, then any employee present shall be deemed the "person in charge".

Youth athletic activity means an organized event or activity exclusively for children of an age eligible for enrollment in Fairfax County Public Schools or younger, where such children participate in sports, physical exercises, or athletic competition.

Youth athletic concession stand means a food establishment as defined in section 43.1-1-4 of this chapter that is located and operated at a youth athletic activity, and that operates for not more than three out of seven days per week and for not more than 10 consecutive weeks in total duration.

Section 43.1-1-5. Modifications to FDA Food Code.

The following sections of the FDA Food Code, as incorporated into the Code of the County of Fairfax, Virginia, are modified as follows:

(a) ~~Deleted Section 3-301.11(B) is amended to read:~~

~~Except when washing fruits and vegetables as specified under § 3-302.15 or when otherwise APPROVED, FOOD EMPLOYEES should not contact exposed, READY TO EAT FOOD with their bare hands and should use suitable UTENSILS such as deli tissue, spatulas, tongs, SINGLE USE gloves or dispensing EQUIPMENT.~~

(b) Section 3-501.16(e) (A)(2)(b)(ii) and Section 3-501.17(A)(2)(b) of the FDA Food Code is modified to read:

No later than January 1, 2008, the equipment is upgraded or replaced to maintain FOOD at a temperature of 5°C (41°F) or less.

(c) ~~Deleted Compliance with the provisions of section 3-603.11 of the FDA Food Code is required commencing on January 1, 2002.~~

(d) Section 8-802.10(A) of Annex 1 is amended to read:

If admission to the PREMISES of a FOOD ESTABLISHMENT is denied or other circumstances exist that would justify an inspection order under LAW, to make an inspection that includes the recordation of information by any means of audio-visual recordation including (but not limited to) photography, tape-recording and videotaping.

(e) Sections 2-102.11(B), 2-102.20, 8-201.11, 8-201.12, 8-303.10 and 8-304.10 are deleted.

(f) Section 4-205.10 is amended to read:

(A) Food Equipment, as defined in Section 1-201.10 (B) (25) Equipment, of the ~~1999~~ 2005 FDA Model Food Code, that is certified or classified for sanitation by an American National Standards Institute (ANSI)-accredited certification program will be deemed to comply with Parts 4-1 and 4-2 of this chapter. The definition of equipment shall not include kitchenware, tableware or utensils.

(B) Food Equipment in a food establishment shall be:

(1) Certified or classified for sanitation by an American National Standards Institute (ANSI)-accredited certification program, or;

(2) Certified or classified for sanitation by an equivalent certification program to that specified in Subparagraph (1) of this paragraph; or

(3) Approved by the Regulatory Authority before installation and/or use.

(g) Section 6-402.11 is amended to read:

Public toilet rooms shall be provided for CONSUMERS whenever seating for CONSUMERS is provided on the premises. CONSUMERS shall not be permitted to gain access to toilet rooms by passing through a kitchen, food preparation, food storage, or utensil washing area. Toilet rooms shall be conveniently located and accessible to EMPLOYEES during all hours of operation. Toilet rooms must be entirely separate and apart from any rooms or areas used for utensil washing or for the manufacture, storage, and handling of food products. Public and employee toilet facilities shall be installed according to and in the number required by the Virginia Uniform Statewide Building Code (VUSBC).

Article 2. Mobile Units

Section 43.1-2-1. General.

1 Mobile food units and limited service mobile food units shall comply with the requirements
2 of this Chapter. All units are to be clearly identified with the unit trade name and contact phone
3 number conspicuously displayed on both sides of the unit.

4
5 Section 43.1-2-2. Requirements for types of mobile food units.

6 (a) A mobile food unit shall be equipped with a hand sink and a three-compartment sink.
7 However, the director may waive the requirement for a three-compartment sink if the menu
8 items dispensed from the unit do not require extensive preparation and the unit has access to
9 a three-compartment sink at the base of operation.

10 (b) A limited service mobile food unit shall be equipped with a hand sink and a three-
11 compartment sink. However, the Director may waive the requirement for a hand sink if only
12 prepackaged foods are to be dispensed or if an alternate method to hand washing, approved by
13 the director, is used. Such alternate methods may include, but are not limited to, use of
14 disposable hand washing towelettes, disposable gloves, sanitizing solutions that meet the
15 specifications of 21 C.F.R. § 178.1010 or other techniques approved by the Director. The
16 Director may waive the requirement for a three-compartment sink if the limited service mobile
17 food unit has access to a three-compartment sink at the base of operations or only prepackaged
18 foods are to be dispensed.

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20 Section 43.1-2-3. Single service utensils.

21 Mobile food units and limited service mobile food units shall dispense only single service
22 utensils for use by the customer.

23
24 Section 43.1-2-4. Base of operation.

25 Mobile food units and limited service mobile food units shall operate from a base of
26 operation that possesses a food establishment permit issued in accordance with this Chapter.
27 However, the Director may waive this requirement if the mobile food unit or limited service
28 mobile food unit meets all construction standards applicable to the food items served by the unit.
29 The Director may allow a mobile food unit or limited service mobile food unit to operate from a

base of operation outside of Fairfax County, Virginia, if the base of operation meets basic sanitation requirements and is permitted by another jurisdiction.

Article 3. Compliance Procedures; Application Fee

Section 43.1-3-1. Permits for food establishments.

(a) No person shall operate a food establishment unless that person possesses a valid permit issued by the Director. Only a person who complies with the requirements of this Chapter shall be entitled to receive or retain such a permit. Permits are not transferable. A valid permit shall be posted in every food establishment in a conspicuous place in the public view. Food establishment permits are issued for a calendar year and expire on December 31 regardless of the month of issue.

(b) An initial application fee and an annual renewal application fee of ~~\$25~~ \$45 shall be assessed for each permitted food establishment including temporary food stands operating less than 14 days. A portion of this fee is designated to support a program of food safety education to include, for example, but not be limited to a quarterly newsletter, food advisories, and food safety publications. Such fee shall not be applicable ~~to temporary food stands operating less than 14 days~~; to food establishments operated by the Office of Food and Nutrition Services of the Fairfax County School Public Schools; or to any Fairfax County agency; however, such fees shall apply to private vendors subcontracted by Fairfax County to operate food establishments. The application fee shall be based on a calendar year and shall be due and payable on or before December 31 or upon initial application. The fee shall not be prorated. An additional fee of \$10 shall be assessed for renewal applications received after December 31.

(c) Establishments failing to file the required application for renewal of the permit will be operating without a valid permit and will be subject to immediate closure in accordance with Section 43.1-3-8 of this chapter.

Section 43.1-3-2. Exemptions.

1 (a) The Director may exempt coffee and related beverage service and service areas and
2 such one time events or affairs from such provisions or requirements of this Chapter as the d
3 Director may deem advisable upon determining that the operation of such service, service areas,
4 events or affairs will not adversely affect the public health.

5 (b) The provisions of this chapter shall not apply to youth athletic concession stands at
6 youth athletic activities, if such stands are promoted or sponsored by either a youth athletic
7 association or by any charitable nonprofit organization or group thereof which has been
8 recognized as being part of the recreational program of the county by ordinance or resolution of
9 the Board of Supervisors, provided, however, that the Director, or a qualified person designated
10 by the director, shall require such concession stands to be operated in compliance with Article 6
11 of this chapter.

12 Section 43.1-3-3. Food manager certificate and responsibility.

13 (a) It shall be unlawful to operate a food establishment unless it is under the immediate
14 control of a certified food manager; provided that a limited food establishment shall not be in
15 violation of this subsection if it is under the immediate control of a certified limited food
16 manager.

17 (b) The food manager or limited food manager shall be responsible for training food service
18 personnel in sanitary food-handling techniques and proper methods of food protection, and for
19 ensuring that good public health and food protection practices and sanitary techniques in
20 manufacturing, storing, serving and transporting foods are used at all times on the premises
21 under his control.

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25 Section 43.1-3-4. Issuance of food manager certificate.

26 (a) Any person desiring to obtain a certificate required by Section 43.1-3-3 shall apply in
27 writing on forms provided by the Director or on forms accepted by the Director. Such
28 application shall include the name and address of the applicant, the location and type of the
29 proposed food establishment and the signature of the applicant.

(1) The Director may, by specific contract issued in accordance with appropriate administrative procedures, designate a private vendor to issue, on the Director's behalf, a food manager certificate to any person who successfully complies with the provisions of this Chapter.

(b) A food manager certificate, ~~or a limited food manager certificate~~, shall be issued only to a person who has passed a food manager certification examination from a food protection manager certification program that is evaluated and listed by a Conference for Food Protection-recognized accrediting agency. ~~or a limited food manager certification examination, approved by the Director.~~

(c) ~~A food manager certificate, or a limited food manager certificate, shall be issued in the name of an individual applicant only, shall not be assignable or transferable, and shall be valid only for a period of three years from the date of notification of the successful completion of the approved exam; or date of issuance for renewals.~~ A limited food manager certificate shall be issued only to a person who has passed a limited food manager certification examination approved by the Director.

(d) ~~A food manager or a limited food manager certificate shall be entitled to the renewal of the certificate for a subsequent three year period provided that:~~

~~(1) an application for renewal is filed with the director not more than 30 days following the expiration date of the certificate; and~~

~~(2) if the applicant's certificate has been revoked or suspended during the preceding three years, the applicant shall retake and pass either a food manager certification examination or a limited food manager certification examination approved by the director, whichever is appropriate.~~ A food manager certificate, or a limited food manager certificate, shall be issued in the name of an individual applicant only, shall not be assignable or transferable, and shall be valid only for a period of five years from the date of notification of the successful completion of the approved exam.

(e) A food manager certificate shall remain the property of the issuing authority.

(f) A food manager certificate shall be renewed for a five (5) year period upon passing a food manager certification examination from a food protection manager certification program that is evaluated and listed by a Conference for Food Protection recognized accrediting agency.

(g) A limited food manager certificate shall be renewed for a five (5) year period upon

1 passing a limited food manager certification examination approved by the Director.

2 (h) if the applicant's certificate has been revoked or suspended during the preceding five
3 years, the applicant shall retake and pass either a food manager certification examination from a
4 food protection manager certification program that is evaluated and listed by a Conference for
5 Food Protection recognized accrediting agency or a limited food manager certification
6 examination approved by the director, whichever is appropriate.

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8 Section 43.1-3-5. Suspension of permit or certificate in emergencies.

9 (a) If he deems an emergency to exist, the Director may without warning, notice or hearing,
10 order the suspension of any permit or certificate issued under this Chapter if the holder of the
11 permit or certificate does not comply with the requirements of this Chapter, or if the operation of
12 the food establishment does not comply with the requirements of this Chapter, or if the operation
13 of the food establishment otherwise constitutes a substantial and imminent hazard to public
14 health. Suspension is effective upon service of the notice required by subsection (b) of this
15 section. When a permit is suspended, all food-handling operations at the food establishment
16 shall immediately cease. When a certificate is suspended, food-handling operations shall
17 immediately cease unless another certified food manager or, where appropriate, certified limited
18 food manager is present and in control. If the reason for the suspension is eliminated prior to the
19 suspension being sustained by the Director, the suspension shall be terminated.

20 (b) Whenever a permit or certificate has been ordered suspended, the holder of the permit
21 or certificate or the person in charge shall be notified in writing that the permit or certificate is
22 suspended effective upon service of the notice and that an opportunity for a hearing will be
23 provided if written request for a hearing is filed with the Director by the holder of the permit or
24 certificate within 10 days. The holder of the permit or certificate shall be afforded an
25 opportunity for hearing within 20 days of receipt by the Director of a request for a hearing from
26 the holder. If no written request for a hearing is filed within 10 days, the suspension is sustained.
27 The Director may end a suspension at any time if the reason for suspension no longer exists.

28 (c) The Director, in lieu of suspending a permit, may suspend the applicability of the
29 permit to a specific commissary or specific products.

1 Section 43.1-3-6. Revocation of permit or certificate.

2 (a) Notwithstanding any other provision of this Chapter, the Director may, after providing
3 the opportunity for a hearing, order the revocation of a permit or certificate issued under this
4 Chapter for serious or repeated violations of any of the requirements of this Chapter or for
5 interference with the Director in the performance of the duties defined in this Chapter.

6 (b) Prior to ordering the revocation, the Director shall notify, in writing, the holder of the
7 permit or certificate or the person in charge of the specific reasons for which the permit or
8 certificate is to be revoked, and that the permit or certificate shall be revoked on the tenth day
9 following service of the notice unless a written request for a hearing is filed with the Director by
10 the holder of the permit or certificate within such 10-day period. If no request for hearing is
11 filed within the 10-day period, the permit or certificate shall be revoked by order of the Director
12 and the revocation shall be final.

13
14 Section 43.1-3-7. Service of notices.

15 A notice required by this Chapter is properly served when it is delivered to the holder of the
16 permit or certificate or to the person in charge, or when it is sent by registered or certified mail,
17 return receipt requested, to the last known address of the holder of the permit or certificate. A
18 copy of the notice shall be filed with the records of the health department.

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22 Section 43.1-3-8. Closing of food establishments.

23 Notwithstanding any other provision of this Chapter, the Director shall order the closure of
24 any food establishment which is operated without the permit required by Section 43.1-3-1, or is
25 operated without a certified food manager being in control as required by Section 43.1-3-3. The
26 closure order shall be in writing, shall specifically state the reason for the closure and shall
27 clearly specify the compliance requirements necessary to have the order revoked. The Sheriff of
28 the County shall enforce the closure order until it is rescinded by the Director in writing. Upon
29 receipt of satisfactory proof of compliance with the written requirements set forth in the closure
30 order, the Director shall immediately issue a written rescission of the order.

Section 43.1-3-9. Hearings.

The hearings provided for in this Chapter shall be conducted by the Director at a time and place designated by the Director. Any oral testimony given at a hearing shall be summarily reported or recorded. The Director shall make a finding based upon the hearing record and shall issue, sustain, modify or rescind any notice or order considered in the hearing. A written report of the hearing decision shall be furnished to the holder of the permit or certificate by the Director.

Section 43.1-3-10. Application after revocation.

Whenever a revocation of a permit or certificate has become final, the holder of the revoked permit or certificate may submit a written application for a new permit or certificate. The establishment for which an application for a new permit is submitted after revocation shall meet all applicable provisions of this chapter.

Article 4. Penalties

Section 43.1-4-1. Penalties.

It shall be unlawful for a person to fail to comply with any provision of this Chapter, including a provision of the FDA Food Code that applies to the person. It also shall be unlawful for any food establishment, limited food establishment, mobile food unit or limited service mobile food unit to fail to comply with any provision of this Chapter that applies to it. A person who fails to comply with any applicable provision shall be in violation of this Chapter. The owner of any such food establishment or mobile food unit which fails to comply with any applicable provision shall be in violation of this Chapter. Each violation of this Chapter is punishable as a Class 1 misdemeanor in accordance with Virginia law. The criminal penalty provided in this Section shall be in addition to the administrative remedies set forth elsewhere in this Chapter.

Article 5. Review of Plans and Specifications

Section 43.1-5-1. Submission of plans, specifications and other data; inspection prior to operation; fees.

(a) Whenever a food establishment is constructed or remodeled or whenever an existing structure is converted to use as a food establishment, plans and specifications for such construction, remodeling, or conversion shall be submitted to the Director for review and approval prior to commencement of such construction, remodeling or conversion. The Director shall verify that the plans and specifications conform to the requirements of this Chapter and the FDA Food Code. The plans and specifications shall include the intended menu, anticipated volume of food to be stored, prepared, and sold or served, the proposed layout and arrangement of the facilities, plumbing plans, mechanical plans, electrical plans, finish schedules, lighting schedules, and the types, model numbers, locations, dimensions, performance capacities, and installation specifications of proposed fixed equipment and facilities. The Director may require additional plans or information, as needed, depending on the nature and extent of the proposed construction, remodeling or conversion. The Director shall approve the plans and specifications if they meet the requirements of this Chapter and the FDA Food Code. The Director's approval of any plans or specifications shall not be viewed to be a determination that said plans or specifications are free from error. The owner shall have final responsibility for the accuracy and completeness of the plans and specifications, as well as for subsequent construction and installation. No food establishment shall be constructed, remodeled or converted except in accordance with plans and specifications approved by the Director.

(b) Whenever plans and specifications are required to be submitted and approved, the Director shall inspect the food establishment prior to its beginning operation to determine compliance with the approved plans and specifications and with the requirements contained in this Chapter.

(c) A fee of ~~\$200~~\$240 shall be paid to the Director upon submission of plans.

Article 6. Youth Athletic Concession Stands

Section 43.1-6-1. Requirements for operation.

(a) The association, organization, or group sponsoring or promoting a youth athletic concession stand shall notify the Director of the original date and location of the operation of the stand at least 10 days prior to beginning operation. Such notification shall include a menu of the food items to be served.

(b) No person, association, organization, or group shall operate a youth athletic concession stand unless that person, association, organization, or group possesses a valid permit issued by the Director. Such permit shall be posted in a conspicuous place for public view.

(c) Youth athletic concession stands shall be exempt from the application fee in section 43.1-3-1(b) of this Chapter.

(d) There is at least one person present at the site of the concession stand who is responsible for ensuring safe food handling is practiced by food handlers; and has attended within the last ~~three~~ five years, a food safety workshop recognized by the Director.

(e) Potentially hazardous foods that require preparation before service shall be prepared and/or cooked on site at the concession stand.

(f) Potentially hazardous food prepared in a private home may not be used or offered for human consumption at the concession stand.

(g) Bare hand contact with ready-to-eat foods is prohibited. This includes any food that is in a form that is edible without washing, cooking, or additional preparation by the concession stand or consumer and that is reasonably expected to be consumed in that form, as specified in section 1-201.10(B) ~~(66)~~ of the ~~1999~~ 2005 FDA Food Code.

(h) All food shall be obtained from sources that comply with law or are otherwise acceptable to the Director based on a determination of conformity, principles, practices, and generally recognized standards that protect public health.

(i) Food thermometers shall be available at the stand and used to monitor temperatures of potentially hazardous foods if potentially hazardous foods are prepared or served.

(j) Hand washing facilities shall be provided and easily accessible for use by food

handlers.

(k) Food handlers shall frequently, thoroughly wash their hands and the exposed portions of their arms with soap and water before handling food, and as often as necessary to keep them clean.

(l) Persons with acute respiratory infections such as colds or flu; persons with symptoms of vomiting, diarrhea or jaundice; or persons with communicable diseases involving organisms that can be transmitted by food such as *S.typhi*, *Shigella*, *Hepatitis A*, norovirus or *E-coli*, shall not handle food and must be excluded from food preparation and service.

(m) Eating, and the use of tobacco products, is prohibited in the food preparation area.

(n) Adequate hot and cold holding equipment must be provided to maintain the temperatures of potentially hazardous foods at either 41° F or below, or ~~440~~ 135° F or above, unless time is used as a public health control as specified in section 3-501.19 of the ~~1999~~ 2005 FDA Food Code.

(o) Tableware, such as plastic forks, knives, spoons, and paper or foam plates, if provided to the consumer, shall be single-service and disposable.

(p) Drinking water shall be obtained from a potable source. Water supply hoses, when used, shall be of food grade quality.

(q) Food shall be stored off the ground.

(r) Non-potentially hazardous baked good items (such as cookies, brownies, and cupcakes) may be prepared in the homes of members or volunteers of the association, organization, or group sponsoring or promoting a concession stand provided a clearly visible sign is posted at the point of sale or service stating: "Consumer Notice – Baked Good items were prepared in a kitchen that is not subject to inspection by the Health Department."

43.1-6-2 Permit Suspension; Hearing

Concession stands found not to be in compliance with the requirements of this Article are subject to immediate closure and suspension of all food handling operations, and/or other remedies as determined by the Director. The holder of a permit may request an opportunity for a hearing if the holder of the permit files a written request for a hearing with the Director within 10 days of a closure or suspension.